

In the Matter of Brian Hammarstrom

DOP Docket No. 2006-1546

(Merit System Board, decided March 8, 2006)

The Township of Marlboro (Township), represented by Parthenopy A. Bardis, Esq., appeals the attached determination of the Division of Human Resource Information Services (HRIS) which mandated that the Township consider Brian Hammarstrom for appointment from the January 24, 2005 certification of the Police Officer (S9999F), Marlboro Township eligible list.

The pertinent facts of this matter are as follows: The Police Officer (S9999F), Marlboro Township eligible list was promulgated on December 24, 2004 and expires on December 23, 2006. The subject eligible list was certified on January 24, 2005 with a disposition due date of July 25, 2005. Hammarstrom's name was in the 13th position on the certification, and he was listed as a non-veteran. On May 4, 2005, the Division of Selection Services issued a memorandum to retroactively correct an error on Hammarstrom's veteran status, namely, that he was entitled to veterans' preference. This correction moved Hammarstrom from the 13th position to the 2nd position on the outstanding certification. On May 5, 2005, HRIS sent the Township a copy of this memorandum along with an Addition to Certification which noted the change in Hammarstrom's position on the certification. Subsequently, on July 22, 2005, the Township returned the certification indicating that it had appointed Timothy Snyder, a veteran (3rd position) and Gregory Aronne, a non-veteran (5th position). On August 2, 2005, HRIS issued a Disposition Deficiency Notice stating that the Township's appointments were not in-line, and that Hammarstrom was bypassed outside the rule of three, or list priority. In response, the Township requested that its appointments be approved and it not be required to consider Hammarstrom from the January 24, 2005 certification as it had made the appointments on April 1, 2005, prior to receiving the change on the certification. HRIS denied the Township's request, relying on *N.J.A.C. 4A:4-3.8* which provides that the Department of Personnel (DOP) may correct an error at any time during the life of an eligible list.

On appeal, the Township requests that the Merit System Board (Board) approve its disposition of the January 24, 2005 certification of the Police Officer (S9999F), Marlboro Township, eligible list. The Township contends that it properly appointed two eligibles effective April 1, 2005 from the certification it was given at the time. It argues that the appointees were immediately enrolled in the Trenton Police Academy to begin their training.¹ Additionally, it asserts that it should not be forced to displace an employee

¹ Records indicate that the appointees entered the Trenton Police Academy on April 11, 2005.

serving in the position where it has already made financial expenditures for training costs and salary. Further, the Township states that it does not have any police officer positions available at this time. Moreover, the Township argues that Hammarstrom is not entitled to immediate appointment as a police officer and that his only remedy should be consideration for appointment at the time of the next certification. In making these assertions, the Township relies on *In re Crowley*, 193 N.J. Super. 197 (App. Div. 1984), *Nunan v. Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990) and *Schroder v. Kiss*, 74 N.J. Super 229, 240 (App. Div 1962).

Hammarstrom, despite being provided the opportunity, did not submit any information or arguments for the Board's review.

CONCLUSION

N.J.A.C. 4A:4-3.6(b) states that when the name of an eligible is added to an existing list to correct an error made by the Department of Personnel, the Department shall determine the retroactive certification and/or appointment rights. In addition, N.J.A.C. 4A:4-3.8(a) provides that the DOP may correct an error at any time during the life of an eligible list. Further, N.J.A.C. 4A:4-3.8(c) states that correction of errors may result in a change in ranking. Also, N.J.S.A. 11A:5-6, N.J.A.C. 4A:4-4.8(a)3i and N.J.A.C. 4A:5-2.1 provide that disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list. Moreover, N.J.A.C. 4A:4-1.10(a) states that all appointments, promotions, and related personnel actions in the career, unclassified or senior executive service are subject to the review and approval of the Department of Personnel.

In the instant matter, the Township contends that it properly appointed the two applicants from the January 24, 2005 certification of the Police Officer (S9999F), Marlboro Township eligible list. It argues that it made its appointments on April 1, 2005, before the DOP corrected Hammarstrom's veteran status on May 4, 2005 and changed his position on the certification to number 2. In addition, the Township claims that it immediately enrolled the two appointees in the police academy and made financial expenditures for training costs and salary. However, N.J.A.C. 4A:4-3.8 allows the DOP to correct an error at any time during the life of an eligible list. Additionally, the Township was notified of the change in the subject certification on May 5, 2005, before it disposed of the certification on July 22, 2005. Once it received the corrected certification, the Township was required to properly dispose of that certification. Further, the Board does not find the fact that the two appointees were immediately entered into a police academy to be persuasive. In this regard, the Board notes that N.J.A.C. 4A:4-1.10(a) provides that all appointments to the career service are subject

to the review and approval of the DOP. As such, it appears as though the Township acted impetuously in sending its appointees to training before disposing of the certification and having the appointments approved by the DOP.

In addition, the Township contends that Hammarstrom is not entitled to immediate appointment as a police officer and that his only remedy should be consideration for appointment at the time of the next certification. In making these assertions, the Township relies on *Crowley, supra*, *Nunan, supra*, and *Schroder, supra*. However, these cases are distinguishable from the present matter. In *Crowley* and *Nunan*, neither of the appellants was a veteran as is Hammarstrom. Per Merit System law and rules, as a veteran on an open competitive eligible list, Hammarstrom's name cannot be bypassed for appointment. Therefore, since Hammarstrom ranked higher than Snyder and Aronne after the certification was corrected, absent any disqualification, Hammarstrom was entitled to an appointment before Snyder or Aronne's names were reached on the certification. Further, in *Schroder*, the appellant was a disabled veteran, but the appointing authority did not make any appointments from the eligible list because the list was incomplete and the title under test was abolished by the township committee via an ordinance. In the instant matter, the position has not been abolished, the eligible list was complete, and the Township made appointments from the eligible list.

Based on the foregoing, the Board finds that Hammarstrom's appointment is mandated. The Board notes that the Township is not required to displace Aronne² if another position exists, however, it is required to appoint Hammarstrom. Once appointed, upon the successful completion of a working test period, Hammarstrom would be entitled to a retroactive date of appointment to April 1, 2005, the date he would have been appointed but for the administrative error. This date is for salary step placement and seniority-based purposes only. The Board notes that the appellant is not entitled to any back pay in this matter. The Board does not provide for awards of back pay for appeals that are decided by the Board based on the written record unless, pursuant to *N.J.A.C. 4A:2-1.5(b)*, sufficient cause is presented. No such cause has been presented.

ORDER

² Aronne is the appointee who would be displaced, as Snyder is a veteran and could not be bypassed to reach Aronne, a non-veteran, on the subject certification.

Therefore, the Merit System Board orders that absent any disqualification issue ascertained through the appointment process, Brian Hammarstrom's appointment is otherwise mandated. Further, the Board orders that the Township of Marlboro properly dispose of the January 24, 2005 certification of the Police Officer (S9999F), Marlboro Township eligible list in accordance with this decision.

After appointment and upon the successful completion of his working test period, the Board orders that Hammarstrom be granted a retroactive date of appointment to April 1, 2005, the date he would have been appointed but for the administrative error. This date is for salary step placement and seniority-based purposes only. However, the Board does not grant any other relief, such as back pay or counsel fees, except the relief enumerated above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.